

Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

#### SECTION 5.50

DEFAULT (Fixed-Price Supply and Service)  
(APR 1984) (FAR 52.249-8)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or service similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either

its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as *manufacturing materials* in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that

the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

**SECTION 5.51  
TERMINATION OF DEFINED BENEFIT  
PENSION PLANS (SEP 1989) (FAR  
52.215.27)**

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(j)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of FAR 15.804-8(e).

**SECTION 5.52  
REVERSION OR ADJUSTMENT OF PLANS  
FOR POSTRETIREMENT BENEFITS OTHER  
THAN PENSIONS (PRB) (FEB 1995) (FAR  
52.215-39)**

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804-8(f). The resulting adjustment to prior years' PRB

costs will be determined and applied in accordance with FAR 31.205-6(o).

**SECTION 5.53  
NOTICE TO THE GOVERNMENT OF LABOR  
DISPUTES (APR 1984) (FAR 52.222-1)**

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

**SECTION 5.54  
PENALTIES FOR UNALLOWABLE COSTS  
(OCT 1995) (FAR 52.242-3)**

(a) Definition. Proposal, as used in this clause, means either --

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which--

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of

the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to Part 31 of the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to--

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed--

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.).

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor. [FR Doc. 95-19860 Filed 8-15-95]

# **Appendix A**

**1996**

**Certified Brochure Text**

# Appendix A

## CERTIFIED BROCHURE TEXT

I certify this text contains the 1996 benefits, exclusions and other brochure language agreed to by the Carrier and the Office of Personnel Management under Contract \_\_\_\_\_ of the Federal Employees Health Benefits Program.

### For the Plan

\_\_\_\_\_  
Signature of Plan Contracting Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed name and title

\_\_\_\_\_  
Contracting entity, with dba if applicable

### For the Office of Personnel Management

\_\_\_\_\_  
Signature of OPM Contracting Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title

## APPENDIX B

## SUBSCRIPTION RATES, CHARGES, ALLOWANCES AND LIMITATIONS

## Experience-Rated Prepaid Plan

CONTRACT NO. CS \_\_\_\_\_

Effective January 1, 1996

(a) Biweekly net-to-carrier rates, with appropriate adjustments for Enrollees paid on other than a biweekly basis, are as follows:

Self Only \$ \_\_\_\_\_

Self and Family \$ \_\_\_\_\_

(b) The amount of expenses and charges to be included in item (a)(1)(iii) of Section 3.2 shall be as set out in the schedule below:

| <u>Item</u>                 | <u>Amount</u>   |
|-----------------------------|---|
| (i) Administrative Expenses | Actual, but not to exceed the Contractual Expense Limitation for 1996.      |
| (ii) Taxes                  | Actual (except that premium taxes as defined are not allowable).            |
| (iii) Service Charge.       | _____ % of estimated incurred claims and allowable administrative expenses. |

The Contractual Expense Limitation for 1996 is the Contractual Expense Limitation for 1995 (\$ \_\_\_\_\_) -- the base -- plus or minus adjustments for inflation and enrollment changes. The base shall be adjusted by percentage changes in enrollment (from OPM's March 1995 to March 1996 headcount) and by the percentage change in the average monthly Consumer Price Index for All Urban Consumers (published monthly by the Bureau of Labor Statistics) from the 12 month period ending on September 30, 1995 to the 12 month period ending on September 30, 1996.

APPENDIX C

CONTRACT ADMINISTRATION DATA

1. *Routine Contract Administration.* Except as specified below, each party should have one representative for administering the contract. The representatives are:

CARRIER

OPM

Chief, Insurance Contracts Division II  
P.O. Box 707  
Washington, DC 20044

2. *Notice.* Where this contract requires that one party notify the other party in writing such notice shall be sent to:

CARRIER

OPM

Office of Insurance Programs  
P.O. Box 707  
Washington, DC 20044

3. *Paying.* The OPM paying office and Carrier office(s) designated to receive funds are specified below. Where the Carrier designates more than one receiving office, *i.e.*, split between the Carrier and an Underwriter, both receiving offices with the percentage split between them shall be shown:

CARRIER

OPM

UNDERWRITER

Fiscal Management Division  
P.O. Box 547  
Washington, DC 20044

4. *Reporting.* When required, the Carrier shall furnish the following reports to the address specified.

ITEM:

SEND TO:

Fiscal Management Division  
P.O. Box 547  
Washington, DC 20044

5. *Disputed Claims.* The following offices are designated for the receipt and processing of disputed claims.

CARRIER

OPM

Insurance Contracts Division II  
P.O. Box 436  
Washington, DC 20044

## **APPENDIX D**

**FEHBP Supplemental Literature Guidelines**

**AND**

**Rules Governing Advertisements of Accident  
and Sickness Insurance With Interpretive Guidelines  
(Model Regulation Service, NAIC)**



**APPENDIX D-a**

**ATTACH THE  
FEHBP Supplemental Literature Guidelines  
(RV JAN 1996)**

## APPENDIX D-a

### FEHB Supplemental Literature Guidelines

(RV JAN 1996)

This is the primary guide a Carrier should use to assess whether the Carrier's supplemental marketing literature complies with FEHBAR 1603.70, Misleading, Deceptive or Unfair Advertising. (Use the NAIC Guidelines for additional guidance when needed.)

#### a) GENERAL

1. Section 1.13 of the FEHB contract requires that the Carrier may not distribute or display marketing materials or other supplemental literature (including prepaid plan provider directories) in a Federal facility or arrange for the distribution of such documents by Federal agencies unless the documents have been prepared in accordance with FEHBAR 1652.203-70, and the Plan has certified to OPM that is the case.

2. Review supplemental marketing material for compliance each year, whether or not it changed from the past year.

3. Word the literature simply and concisely to get a readily understandable, attractive marketing piece.

4. Include sufficient detail to ensure accuracy.

5. Under the FEHBP, the FEHB brochure is based on text approved by OPM and is a complete statement of benefits, limitations, and exclusions. Include the following statement in all supplemental literature which in any way discusses Plan benefits:

*"This is a summary [or brief description] of the features of the [insert Plan's name]. Before making a final decision, please read the Plan's Federal brochure ([insert brochure number]). All benefits are subject to the definitions, limitations, and exclusions set forth in the Federal brochure."*

6. You may include non-FEHBP benefits, i.e., benefits which are not FEHB benefits and are not guaranteed under the Federal contract with the following disclaimer:

*"These benefits are neither offered nor guaranteed under contract with the FEHB Pro-*

*gram, but are made available to all enrollees and family members who become members of [insert Plan's name]."*

7. Supplemental literature must be clearly distinguishable from the Federal brochure.

8. Do not use the FEHB logo in your supplemental literature.

9. Do not use material which conflicts with the Federal brochure. If your material conflicts, you must change the material or not distribute it.

#### b) RATE PRESENTATIONS

Under the FEHBP there are only two categories of enrollment, Self Only and Self and Family. For most enrollments, the premium for each enrollee's enrollment is shared between the enrollee and the Government. The Government contribution is based on the formula provided in the FEHB law. Deductions for most enrollees' share, along with the Government's contribution, are made in accordance with the schedule on which the employee or annuitant's (retiree) salary or annuitant check is issued by the enrollee's agency or retiree's retirement system. Most employees are paid biweekly. Annuitants are issued monthly checks.

Employees and annuitants do not have separate categories of enrollment. They pay the same rates, whether on a biweekly, semimonthly, or monthly basis, and receive the same benefits when they are in the same FEHB Plan, except that active Postal employees pay a lesser share, as their cost sharing formula with the Postal Service calls for a greater Government contribution.

The enrollee's share for each FEHB Plan for each type of enrollment (Self Only, Self and Family) is listed in the *FEHB Guide*. This Guide is prepared each Open Season and is distributed directly to agencies by OPM; they in turn distribute the Guide to employees. Biweekly and monthly rates are also shown on an insert you prepare for your brochure.

Separate guides are prepared for special groups of enrollees, including those for which the Government makes no premium contribution, such as former spouses and employees and dependents with temporarily continued coverage.

**In making your rate presentations:**

1. List your FEHB rates in each piece of supplemental material which lists benefits. Do not list the rates of any competitor Plan.

2. Immediately above the rates include the following statement:

*"These rates do not apply to all enrollees. If you are in a special enrollment category, please refer to your special FEHB Guide or contact the agency which maintains your health benefits enrollment."*

3. If you wish to list Postal rates in addition to non-Postal rates, Postal and non-Postal rates should be clearly identified and listed separately. (Please note there are no monthly Postal rates; upon retirement, Postal employees receive the non-postal contribution.)

**c) BENEFIT PRESENTATIONS**

Please note the following:

1. Do not compare your benefits or operations with that of any other Plan.

2. Accurately describe your FEHB benefits offering.

3. Avoid incomplete or overstated benefit descriptions, or those which conflict with the Federal brochure.

4. Show applicable coverage limitations, such as day or dollar limitations, coinsurance or deductibles.

5. Do not list exclusions and limitations not listed in the Federal brochure.

6. Do not include general references not in the brochure.

7. Do not reference coverage for which a Federal employee or retiree would have to drop FEHB coverage. Exception: 5 CFR 890.301 provides that an annuitant or former spouse, as defined in 5 U.S.C. 8901(10), who cancels FEHBP enrollment for the purpose of enrolling in a prepaid health Plan under sections 1833 or 1876 of the Social Security Act may register to re-enroll. Therefore, if

your's is such a prepaid Plan contracting with Medicare you must describe your Medicare supplemental program for Medicare-covered retirees.

**d) ENROLLMENT INSTRUCTIONS**

Enrollment under the FEHBP is governed solely by the Federal Employees Health Benefits law and applicable regulations. The various Federal agencies have responsibility for administering the law and regulations during the annual open enrollment period (Open Season) and at all other times during the year. Agency personnel offices perform the basic health benefits functions, such as instructing employees about the conduct of the Open Season and other health benefits matters, answering employee questions, and processing enrollments, including determinations of eligibility and assignment of effective dates of coverage. Agency payroll offices make the necessary salary deductions.

The Federal document for enrolling in a Plan or changing an existing enrollment in a Plan from Self Only to Self and Family (or the reverse) is the Standard Form (SF) 2809 (or OPM 2809-EZ for annuitants). The effective date for Open Season enrollments is the first day of the first pay period which begins on or after January 1 for employees; the effective date generally is January 1 for annuitants. The specific effective date for an individual will be assigned by the individual's personnel office and appears on the SF 2809 for employees and on the listing sent to the Plan by OPM's Office of Retirement Programs for CSRS/FERS annuitants.

Covered dependents are as defined in the FEHB regulations. Basically, dependents are immediate family members, including spouse and unmarried children under age 22. When Self and Family coverage is established for an individual, all dependents as defined under the regulations are automatically covered as of the effective date assigned on the SF 2809, whether or not they are listed on the SF 2809 or on other documents. Family members (e.g., newborns) who are added under an existing Self and Family enrollment are automatically covered from the date the individual

becomes a family member, e.g., from birth. Personnel offices do not issue any notification when a new dependent is added under an existing Self and Family enrollment and the enrollee does not complete a new SF 2809.

The agencies are the primary contact point for employees on health benefits enrollment matters. OPM's Office of Retirement Programs performs this function for annuitants (retirees). As highlighted below, Plans may not impose their own enrollment requirements and procedures.

1. Do not give specific instructions on enrollment.

2. While the Plan may ask enrollees for information (see Section F) and may follow-up with enrollees and, when necessary, the employing office, do not require that a member complete enrollment or application forms other than or in addition to the SF 2809. (You may ask the enrollee to complete "information" forms.) You may ask the enrollee to keep you advised of family member changes and you may verify the change, but failure to complete a form does not render an eligible dependent ineligible.

3. Personnel offices will not stock your Plan's forms. Do not indicate otherwise.

4. If supplemental literature is directed to potential members rather than just-enrolled members, do not include statements indicating otherwise.

5. Again, the Federal brochure, rather than any other plan document, is the member's complete statement of benefits. Do not indicate otherwise.

#### e) PROVIDER DIRECTORIES

Prepaid Plans must distribute a provider directory along with the Plan's Federal brochure. The directory must conform to the requirements listed below. You must either insert (but not affix) a copy of it into all of your Federal brochures (except that provider directories are not to be inserted in the brochures you will be sending to OPM in Iowa City, IA or Alexandria, VA) or otherwise make them readily available to agencies and employees. Please send a provider directory to any Federal annuitant who requests a copy.

Agencies and their employees will be advised to expect your provider directory.

Please bear in mind that a Federal employee or annuitant choosing your Plan during the Open Season is doing so with the expectation that the Plan's provider directory is accurate and that providers shown will be available starting January 1.

1. Show the Plan's medical facilities (if a group practice Plan) or individual physicians (if an individual practice Plan) or both (if a mixed model Plan). Show the Plan's hospitals also. State the addresses of the medical facilities and show the general location within the service area for individual doctors and hospitals.

2. In the directory, display prominently the following statement: *"It is important to know when you enroll in this Plan, services are provided through the Plan's delivery system, as described in the Plan's Federal brochure, but the continued participation of any one doctor, hospital or other provider cannot be guaranteed."*

3. Do not list enrollment or eligibility requirements on the provider directory.

4. If the enrollment area is listed on the provider directory, show it exactly as stated on the front of the Plan's Federal brochure. Likewise, show only the service area which has been approved by OPM. Do not list providers (or areas) located outside the service area (or enrollment area) shown in the Plan's Federal brochure.

#### f) INFORMATION FORMS

Your Plan may distribute forms to obtain information from enrollees about the enrollee and any dependents. For instance, to obtain the information regarding Medicare you will need for rate-setting purposes under the Federal Program, you may ask who is enrolled under Medicare Part A, Medicare Part B or Medicare Parts A and B. For another example, prepaid Plans may ask that a primary care doctor be selected. If you wish to distribute an information form, you may find such forms are more readily returned if they are postage-paid. The form should follow the requirements listed below:

(1) Include the statement under Section D1 of these Guidelines on the forms.

(2) If your Plan is a prepaid Plan and the member must select a medical group or IPA, also provide space for the member to make such a selection.

(3) Do not indicate enrollment in the Plan is contingent upon completing and returning the form.

## **APPENDIX D-b**

**ATTACH THE  
Rules Governing Advertisements of Accident  
and Sickness Insurance With Interpretive Guidelines  
(Model Regulation Service, NAIC)**

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